

REMARKS

Claims 1-10 are pending in the present application and are rejected.

Applicants' Response to Claim Rejections under 35 U.S.C. §103

Claims 1-4 and 6-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kusano (U.S. Patent No. 6,508,647) in view of Wulknitz et al. (U.S. Patent Application Publication No. 2006/0088482).

It is the position of the Office Action that Kusano discloses the embodiments as claimed, with the exception of the ion conductive paste being aqueously dispersed and having thixotropic properties with viscosity from 0.1 Pa to 5 Pa. The Office Action relies on Wulknitz to provide this teaching. In response, Applicants respectfully submit that Wulknitz does not qualify as prior art, and thus the rejection should be withdrawn. Wulknitz is a patent application published on April 27, 2006 from a German-language PCT application filed on March 11, 2004. Because the PCT application was not filed in English, the PCT filing date may not be relied upon as prior art under 35 U.S.C. §102(e). See, for example, MPEP §2136.03. Therefore, Wulknitz does not have a 35 U.S.C. §102(e) date. Wulknitz may only be relied upon based on its April 27, 2006 U.S. Publication date. Because the April 27, 2006 U.S. Publication date of Wulknitz is after the September 16, 2004 filing date of the pending application, Wulknitz cannot qualify as prior art under 35 U.S.C. §102(a) or (b). Applicants note that the filing date of the pending application is the PCT filing date of September 16, 2004. 35 U.S.C. §363 provides that:

An international application designating the United States shall have the effect, from its international filing date under Article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

Therefore, it is improper for Wulknitz to be applied in a 35 U.S.C. §103 rejection.

Additionally, Applicants note that the publication of German-language PCT application of Wulknitz (WO 2004/080434) cannot be applied as prior art. The publication date of WO 2004/080434 is September 23, 2004, which is after the September 16, 2004 filing date of the pending application. Finally, the publication of the German foreign priority document of Wulknitz (DE 103 11 171.9) cannot be applied as prior art. The publication date of DE 103 11 171.9 is also September 23, 2004, which is after the September 16, 2004 filing date of the pending application. Therefore, since Wulknitz may not be properly applied, the cited art does not disclose or suggest the embodiments as claimed, and the rejection should be withdrawn. Favorable reconsideration is respectfully requested.

Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kusano in view of Wulknitz further in view of Caizza (U.S. Patent No. 5,964,737).

It is the position of the Office Action that the combination of Kusano and Wulknitz disclosed the embodiment as claimed, with the exception of teaching a syringe having a discharge part made of silicone rubber. The Office Action relies on Caizza to provide this teaching.

Application No.: 10/527,338
Art Unit: 3732

Response
Attorney Docket No.: 082407

In response, Applicants respectfully submit that claim 5 is patentable at least due to its indirect dependency on claim 1, which Applicants submit is patentable for at least the reasons discussed above. Favorable reconsideration is respectfully requested.

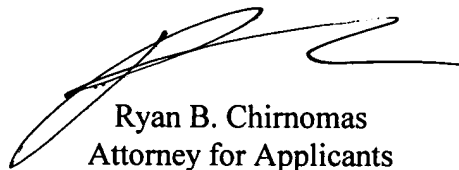
For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants' undersigned attorney.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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